

EXHIBIT
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1 UNITED STATES DISTRICT COURT
2 WESTERN DISTRICT OF WASHINGTON
3 AT SEATTLE

4 DIANNE L. KELLEY, et al.,)
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9 DEPOSITION UPON ORAL EXAMINATION
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12 Taken on November 2, 2007
13 1201 Third Avenue, Suite 2200
14 Seattle, Washington
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23 REPORTED BY:
24 JOHANNA CHAPIN
25 CCR NO. 334
26 JOB NO. 664640

1 your own words to tell us what it is you think Microsoft
2 did wrong here.

3 A. I think they represented this computer as being
4 able to do something it can't.

5 Q. And what's that?

6 A. Operate the real Vista.

7 Q. And how did they do that?

8 A. They affixed something that said that it was Vista
9 compatible, but all I can get is maybe two functions of
10 what the real Vista is.

11 Q. Okay. Now, I'm going to explore all of that in
12 more detail later, but I want to ask you, since you said
13 all you can get is two functions, do you now have Vista on
14 the machine?

15 A. I have other computers that have Vista on them
16 that I have purchased since this computer.

17 Q. Okay. And so on this computer, and that being the
18 B130 Inspiron, you still have Windows XP; is that correct?

19 A. Yes.

20 Q. And what other computers have you bought since
21 that computer?

22 A. Two of the same kind, and they're Acer computers.

23 Q. Okay. They both are Acers?

24 A. Uh-huh.

25 Q. You have to answer yes or no for the court

1 A. I didn't know where to look.

2 Q. So you're talking about the website.

3 A. Uh-huh.

4 Q. Give her a yes or no if you could, please.

5 A. Yes.

6 Q. Okay. I'm sorry to keep doing that, but --

7 A. No, I'm sorry. I keep forgetting to say.

8 Q. Now, I understand, Ms. Kelley, that you have been
9 proposed by your counsel as a class representative in this
10 case. Do you know what that means?

11 A. Yes.

12 Q. Okay. What does that mean to you?

13 A. It means that there are other people like me that
14 feel like they've been deceived. In fact, I'm sure of it.
15 And that's about it. And I'm representing them so that,
16 you know, they can at least get an operating system that
17 runs what they think they should have had.

18 Q. And when you said, "there are people like me,"
19 what do you mean by that?

20 A. People that found out later what the -- what Vista
21 really is.

22 Q. And when you say people who found out later what
23 Vista really is, what do you mean by that?

24 A. Vista has a different appearance. It looks
25 different than XP.

1 Q. Okay. And that was something that you weren't
2 aware of until later?

3 A. Not until I had my other computers.

4 Q. I see. So that was something you didn't know when
5 you purchased the Inspiron B130.

6 A. No.

7 Q. Okay. We're going to get into what you did know
8 and didn't know in a lot of detail later. I'm just trying
9 to get a lay of the land here.

10 And so are you trying to represent, also, people
11 who did understand what Vista was at the time they
12 purchased their computers?

13 MR. THOMAS: Object to the form. You can answer.

14 A. I feel anyone that felt they were deceived, as I
15 feel.

16 Q. (By Mr. Rummage) Okay. I take it from that, that
17 you're not trying to represent anyone who was not deceived
18 at the time they purchased their computer.

19 A. No. I feel that if people don't feel what they --
20 that they got what they thought they should have, then,
21 yes, I would represent that.

22 Q. Okay. But not those people who did get what they
23 thought they should have, correct?

24 MR. THOMAS: Object to the form. You can answer.

25 A. I don't know if there's -- I'm not sure how many

1 . further about upgrading the computer to Windows Vista Home
2 Basic?

3 A. No.

4 Q. So you just looked at the chart, and that was the
5 end of it?

6 A. That was the end of it.

7 Q. And before we move to the Acer purchase, I want to
8 make sure I understand one other thing about this time
9 frame.

10 You mentioned that when your sister called you she
11 asked you whether your computer had a sticker on it,
12 correct?

13 A. Yes.

14 Q. And at that moment in time you weren't sure one
15 way or the other, correct?

16 A. I had no idea what Vista was.

17 Q. Did you go and look after your sister called?

18 A. It wasn't important to me because I didn't really
19 care --

20 Q. So you didn't go look?

21 A. -- at that point.

22 Q. I'm sorry.

23 A. No.

24 Q. So you didn't go look?

25 A. I went and looked, and it said -- but I just sort

1 . of -- you know, I didn't have time to look into it. I
2 didn't -- you know, I just didn't want to at the time.

3 Q. Did you talk to your daughter about it after your
4 sister called?

5 A. I just told her I wanted to look at it.

6 Q. Did she ask you why?

7 A. Yeah. And I just said I want to look at it, so
8 she let me look at it, and I said okay.

9 Q. No further dialog about what the sticker was?

10 A. No, because I wasn't telling her what I was
11 looking at.

12 Q. Do you know whether you had seen the sticker
13 before you did that?

14 A. I hadn't really noticed it, no.

15 Q. Did you look at it -- when was the next time you
16 looked at the sticker?

17 A. I got my new computers.

18 Q. So, again, after March of 2007?

19 A. Uh-huh. I started looking at what my Vista Home
20 Premium could do and then looking to the charts and finding
21 that, of the charts, there was all these things listed that
22 my Acer can do, but when I went with this computer and
23 hooked it in and went to look, there were two little
24 checkmarks, one on securities and one on something else.

25 Q. All right. Now, I want to go back and talk in

DIANNE L. KELLEY 11/2/07

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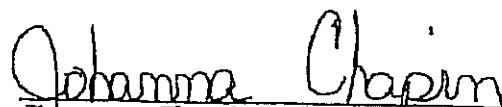
3 STATE OF WASHINGTON)
4 COUNTY OF KING)

5 I, the undersigned Certified Court Reporter and an
6 officer of the Court under my commission as a Notary Public
7 for the State of Washington, hereby certify that the
8 foregoing deposition upon oral examination of DIANNE L.
9 KELLEY was taken before me on November 2, 2007, and
10 transcribed under my direction;

11 That the witness was duly sworn by me to testify
12 truthfully; that the transcript of the deposition is a
13 full, true, and correct transcript to the best of my
14 ability; that I am neither attorney for, nor a relative or
15 employee of, any of the parties to the action or any
16 attorney or counsel employed by the parties hereto, nor
17 financially interested in its outcome.

18 IN WITNESS WHEREOF, I have hereunto set my hand and
19 seal this 5th day of November, 2007.

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Joanna Chapin, #334, Notary Public
in and for the State of Washington
residing at Seattle, Washington.